

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING PAYMENT, ON A PER-SIGNATURE BASIS, OF AN INDIVIDUAL WHO GATHERS SIGNATURES FOR BALLOT ISSUE PETITIONS; REQUIRING A SIGNATURE GATHERER TO BE A STATE RESIDENT; PROHIBITING A SIGNATURE GATHERER FROM GIVING ANYTHING OF VALUE TO A PERSON WHO MIGHT BE INTERESTED IN SIGNING OR WHO HAS SIGNED A PETITION FOR A BALLOT MEASURE; PROVIDING PENALTIES; AND AMENDING SECTION 13-27-111, MCA."

WHEREAS, on October 26, 2006, the Montana Supreme Court decided the case of Montanans for Justice v. State, 2006 MT 277, involving the legality of the process whereby three initiated measures were placed on the 2006 general election ballot; and

WHEREAS, in that case, several political ballot committees brought a civil action in state District Court challenging the Montana Secretary of State's placement on the November general election ballot of two constitutional initiated measures and one statutory initiated measure, pursuant to the gathering of the statutorily required minimum number of signatures of registered electors on petitions filed with the Secretary of State; and

WHEREAS, the District Court and Supreme Court found that the proponents of the three measures relied primarily on paid out-of-state signature gatherers to obtain the overwhelming majority of the signatures submitted on the petitions in question, that uncontradicted evidence showed that the proponents of the three measures paid over \$633,000 to 43 out-of-state signature gathers, and that those gatherers were paid on a per-signature basis of between 50 cents and \$2.50 for each signature; and

WHEREAS, uncontraverted evidence also showed that more than one-half of the total signatures gathered for the three initiated measures were collected by five out-of-state signature gatherers and that one of those gatherers was paid \$84,103.30, another was paid \$70,170.94, another was paid \$69,214.78, and another was paid \$18,155.68 for their efforts; and

WHEREAS, both the District Court and Supreme Court held that the applicable statutes governing the gathering of initiated measure petition signatures require that the signature gatherers be physically present when the petition is signed by an elector but that, contrary to statute and contrary to the affidavits submitted by the gatherers to the Secretary of State, the five principal gatherers could not have been physically present when the

1 signatures that they swore to were collected because of the geographically distant locations in which the
2 signatures were gathered and the time periods in which the signatures were gathered; and

3 WHEREAS, the District Court and Supreme Court also found that all of the 43 out-of-state paid signature
4 gatherers gave false or fictitious addresses in their certification affidavits, some of those addresses being retail
5 stores or shopping centers, that some of the given addresses simply did not exist, that at least some of the
6 out-of-state signature gatherers knowingly attested to false addresses, and that at least one of the purposes of
7 using false or fictitious addresses was to intentionally "leave no trail"; and

8 WHEREAS, the District Court and Supreme Court found that there was substantial evidence that many
9 of the out-of-state signature gatherers used a "bait and switch" tactic in inducing electors to sign petitions for all
10 three initiated measures, explaining to some signing electors, for example, that the three petitions were identical
11 but that three separate signatures were required because the proponents had no carbon paper to use under each
12 of the supposedly identical petitions; and

13 WHEREAS, the District Court found and the Supreme Court affirmed that certification of signatures not
14 signed in the presence of the individual submitting the required affidavits, the use of false addresses, and the use
15 of "bait and switch" tactics constituted a "pervasive and general pattern or practice of fraud and conscious
16 circumvention of procedural safeguards" in violation of state laws relating to qualification of initiated measures;
17 and

18 WHEREAS, the Legislature believes that it is not just coincidental that fraud perpetrated against Montana
19 voters in this case occurred in a situation in which the perpetrators of the fraud were paid on a per-signature basis
20 and believes that payment of the signature gathers on a per-signature basis, resulting in large amounts of money
21 being paid for approximately 4 months of work, was actually one of the reasons why so many "false" signatures
22 were collected; and

23 WHEREAS, the Legislature further believes that it was not just coincidental that the fraud reflected in the
24 opinions of the District Court and Supreme Court was perpetrated by out-of-state signature gatherers and
25 believes that it was the use of out-of-state personnel that was at least partly to blame for the fraud because the
26 out-of-state signature gatherers had no stake in the outcome of the election and felt that if they "left no trail" and
27 left the jurisdiction of Montana courts, they could not be prosecuted for the criminal acts that they committed; and

28 WHEREAS, the Legislature believes that if signature gatherers are required to be Montana residents,
29 they are much more likely to comply with the requirements of Montana laws because they will have at least some
30 stake in the outcome of the election and also believes that if there is any question as to the validity of signatures,

1 requiring that signature gatherers be state residents will make the gatherers more readily available to answer
2 questions and otherwise resolve factual issues concerning the gathering of the signatures; and

3 WHEREAS, although it may not have been used in Montana by this date, it has been reported on the
4 Internet that a certain company using paid signature gatherers has in the past collected signatures near large
5 discount stores, passing out bottled water to persons who might be or were interested in signing the petitions,
6 and although it has no way to accurately judge the veracity of this information presented on the Internet, the
7 Legislature believes that it is at least inappropriate for individuals soliciting signatures for ballot measures to pass
8 out any item of value to persons who might be interested in signing or who have signed a petition for a ballot
9 measure; and

10 WHEREAS, the use of signature gatherers who have no stake in the outcome of the election has become
11 so pernicious, as demonstrated by the facts before the District Court and Supreme Court, that the Legislature is
12 concerned that a person using signature gatherers may find a way to compensate those gatherers in a form other
13 than money and thus evade the legal requirements applying only to "paid signature gatherers", as that term is
14 defined in section 13-27-111, MCA.

15 THEREFORE, the Legislature believes that the facts found by the District Court and confirmed by the
16 Supreme Court in *Montanans for Justice v. State* and the need to prevent the types of abuses that occurred in
17 that case clearly show that the state has a compelling interest in further regulating the use of signature gatherers
18 in initiated measures in order to ensure that signatures collected on petitions for initiated measures accurately
19 reflect the will of Montana voters.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
23 NEW SECTION. **Section 1. Signature gatherer not to be paid or to accept payment based upon**
24 **number of signatures.** (1) A person may not pay a signature gatherer anything of value using a method to
25 calculate the pay that considers the number of signatures gathered.

26 (2) A signature gatherer may not accept anything of value in payment for gathering a signature, the
27 amount of which is calculated by a manner that considers the number of signatures collected by that signature
28 gatherer.

29
30 NEW SECTION. **Section 2. Signature gatherer to be resident -- violation a felony.** (1) A signature

gatherer must be a resident of this state. As used in this section, a "resident" is an individual who:

(a) has a permanent place of abode, with a numbered street address, within Montana even though the individual may be at times temporarily absent from that address;

(b) has not established a residency elsewhere;

(c) may be contacted through the individual's residence while the individual is acting as a signature gatherer; and

(d) may continue to be contacted through the individual's residence within 30 days after the certification of the ballot issue to the governor, as provided in 13-27-308, for which the signatures were gathered.

(2) An individual who violates subsection (1) is guilty of a felony and upon conviction shall be punished as provided by law.

(3) A person who makes use of the services of a nonresident signature gatherer is guilty of a felony and upon conviction shall be punished as provided by law.

NEW SECTION. Section 3. Signature gatherer not to give thing of value. (1) A signature gatherer may not give another individual who is or may be interested in signing a petition, who is signing a petition, or who has already signed a petition anything of value in connection with the gathering of a signature for the purposes of an initiative, a referendum, or the calling of a constitutional convention.

(2) A person who contracts for the use of the services of a signature gatherer may not furnish a signature gatherer with anything of value for the purpose of distributing that thing to an individual who is or may be interested in signing a petition, who is signing a petition, or who has already signed a petition, in connection with the gathering of a signature for the purposes of an initiative, a referendum, or the calling of a constitutional convention.

Section 4. Section 13-27-111, MCA, is amended to read:

"13-27-111. Definitions. As used in 13-27-112, 13-27-113, [sections 1 through 3], and this section, unless otherwise indicated by the context, the following definitions apply:

(1) "Commissioner" means the commissioner of political practices provided for in 13-37-102.

(2) "Paid signature gatherer" means a signature gatherer who is compensated ~~in money~~ for the collection of signatures.

(3) "Person" has the meaning provided in 13-1-101, but does not include a candidate and includes a

1 political committee.

2 (4) "Signature gatherer" means an individual who collects signatures on a petition for the purpose of an
3 initiative, a referendum, or the calling of a constitutional convention."

4
5 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 3] are intended to be codified
6 as an integral part of Title 13, chapter 35, part 1, and the provisions of Title 13, chapter 35, part 1, apply to
7 [sections 1 through 3].

8
9 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable
10 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
11 remains in effect in all valid applications that are severable from the invalid applications.

12 - END -